

which would otherwise be available to Tribal AFDC recipients in the absence of such funds.

(b) A Tribe or organization may contract for services only to the extent that such services are not otherwise available to AFDC Tribal recipients on a non-reimbursable basis.

PART 251—PROGRAM PARTICIPANT EMPLOYMENT PROTECTION

Sec.

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AUTHORITY: Sections 484 and 1102 of the Social Security Act as amended (42 U.S.C. 684 and 1302)

SOURCE: 56 FR 2639, Jan. 23, 1991]

§251.0 Purpose.

(a) The purpose of this part 251 is to set forth the conditions generally applicable when assigning participants to program activities (i.e., work, education or training) under the Jobs Opportunity and Basic Skills Training (JOBS) program. This part contains the following:

(1) The conditions that the State agency shall assure when assigning participants to any program activity;

(2) Appropriate workers' compensation and tort claims protections that must be provided to participants;

(3) Provisions to assure that work assignments shall not result in displacements;

(4) A grievance procedure for resolving displacement complaints by regular employees;

(5) A grievance procedure under the State fair hearing process with respect to on-the-job working conditions, workers' compensation, and wage rates in the case of individuals participating in community work experience programs (CWEP); and

(6) Procedures for appealing State decisions on displacement complaints and certain other complaints to the Department of Labor.

(b) The provisions of this part apply to any work-related programs and activities under JOBS and under any other work-related programs and activities authorized in connection with the Aid to Families with Dependent Children (AFDC) program under section 1115 of the Social Security Act.

§251.1 Program activity conditions.

(a) *Program activity.* The State agency shall assure that:

(1) The program activity shall be related to the capability of the participant to perform the task on a regular basis, including physical capacity, skills, experience, family responsibilities and place of residence.

(2) The total daily commuting time to and from home to the program activity site to which the participant is assigned shall not normally exceed 2 hours, not including the transporting of a child to and from child care. If a longer commuting distance and time is generally accepted in the community, then the round trip commuting time shall not exceed the generally accepted community standards without the participant's consent.

(3) No participant shall be required, without his or her consent, to remain away from his or her home overnight.

(4) The conditions of participation shall be reasonable, taking into account in each case the proficiency of the participant and the child care and other supportive service needs of the participant.

(5) Training shall be appropriate. For training to be appropriate, the nature of the training shall, to the extent practicable, meet local employers' requirements (including their occupational needs) so that the participant will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the provisions in paragraphs (a)(1) through (a)(4) of this section.

(b) *Health and safety standards.* Participants are subject to the same health and safety standards established under State and Federal law that otherwise apply to other individuals in similar activities who are not JOBS participants.

(c) *Non-discrimination.* All participants will have such rights as are available under any applicable Federal, State or local law prohibiting discrimination on the basis of race, sex, national origin, religion, age or handicapping condition. Individuals alleging discrimination may choose to have their complaints processed as a JOBS program dispute pursuant to §250.36, as a violation of other applicable State and local laws prohibiting discrimination, or as a violation of 45 CFR parts 80, 84 and 91.

§251.2 Workers' compensation and tort claims protections.

(a) Each participant covered by a workers' compensation statute or system shall be assured of workers' compensation including medical, accident and income maintenance insurance at the same level and to the same extent as that available to others who are similarly employed.

(b) Those participants in work assignments such as work supplementation and CWEP not covered by an applicable workers' compensation statute shall be provided with medical and accident protection for on-site injury at the same level and to the same extent as that required under the applicable State's workers' compensation statute for covered employment. Income maintenance coverage is not required for these participants.

(c) For the purpose of this section, medical insurance means that the employer must provide for the participant's medical care due to injury arising from, and in the course of, the participant's activity; accident insurance means tort claims protection; and income maintenance insurance means the monetary workers' compensation allowance.

§251.3 Displacement.

The State agency shall assure that CWEP, other work experience, on-the-job training (OJT), and work supplementation assignments:

(a) Shall not result in the displacement of any currently employed worker or position, including partial displacement, such as a reduction in

hours of non-overtime work, wages, or employment benefits;

(b) Shall not impair existing contracts for services or collective bargaining agreements;

(c) Shall not result in the employment or assignment of a participant or the filling of a position when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit, or when an employer has terminated any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created by hiring a participant whose wages are subsidized under this program;

(d) Shall not infringe in any way upon promotional opportunities of any currently employed individual; and

(e) Shall not result in the filling of any established unfilled position vacancy by a participant assigned under §250.62 (work supplementation program) or §250.63 (CWEP) of the JOBS program.

§251.4 Grievances by regular employees.

(a) The State shall establish and maintain a grievance procedure for resolving complaints by regular employees or their representatives that the work assignment of an individual violates any of the prohibitions described in §251.3.

(b) Such grievance procedure shall include an opportunity for informal resolution.

(c) If no informal resolution can be reached within the specified time period as established by the State as part of its grievance procedure, the dissatisfied party may file a request for a hearing with the State.

(d) The State's hearing portion of the grievance procedure shall provide the following: A written notice of the date, time and place of the hearing; a hearing on the record; an opportunity to present evidence, bring witnesses, cross-examine witnesses; representation by counsel; and a written decision.

(e) The State's grievance procedure, pursuant to the provisions in paragraphs (b), (c), and (d) of this section, shall not exceed 90 days from the date of the complaint, by which time the